

FIGHTING ECONOMIC CRIME IN THE EUROPEAN ARENA

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The present paper tries to put together a modest study on the actions taken at EU level in order to fight economic crime. A series of measures have been implemented at national and European level to create a framework for fighting criminality. The European institutions and the national authorities are improving their cooperation in order to fight the increasing number of economic crimes committed both in the private and public sector, while Member States are approximating their legislation to the provisions of the Community acquis. We have divided these efforts into five categories corresponding to the five main areas of economic crime identified at EU level: fight against fraud, which affects the financial interests of the European Union and mainly comprises fraudulent practices in the use of EU funds and in taxation, fight against piracy and counterfeiting, public and private corruption, money laundering and organised crime. In order to combat the negative influence criminality exerts on the development of the economy and of the overall society, for each of the above mentioned areas legislative, institutional, technical and administrative measures have been adopted. We have presented these measures considering their efficiency in meeting the targets set out and the role played in their implementation by the European and national institutions.

Key words

Economic criminality, European cooperation, legislative framework, fraud, organised crime

JEL classification

K42 Illegal behaviour and enforcement of law

F53 International agreements and observance; international organisations

With the creation of an area of free movement for persons, goods, services and capitals the European Union has managed to improve both the economic and social climate but also to create a borderless area for criminals to move and act. In order to solve this new problem the transformation of the area of free movement into an area of liberty, security and justice was needed. The transformation began with the signing of the Maastricht Treaty in February 7th, 1992, which entered into force on November 1st, 1993. The Treaty managed to present a European perspective on what has previously been just a series of bilateral or multilateral agreements and conventions between the Member States on justice and home affairs issues. The legal basis of this area of cooperation is represented by the Title IV of the Treaty establishing the European Communities and Title VI of the Treaty on European Union (Maastricht Treaty). Since 1999, the year the Amsterdam Treaty has entered into force, the area of freedom, security and justice has been regulated both by the first – the Community Pillar and by the third Pillar – Justice and police cooperation in criminal matters – the intergovernmental cooperation Pillar. For the time being the area is guided by the Hague Program, which recommends strengthening up the cooperation at European level in justice and home affairs related issues for 2005 - 2010 period. The programme contains a series of measures to be implemented at national levels in order to improve the cooperation between Law enforcement authorities in the area: improving the information exchange and availability, increasing the attention paid to the spreading of religious fundamentalism and citizens involvement with terrorist acts and increasing the role of Europol (European Police Office) and Eurojust (European network for judicial cooperation, which facilitates civil and criminal cross border cooperation and also the application of the principle of mutual recognition). Fighting economic criminality and organised economic criminality is part of this EU policy and is divided into five main areas of action: fight against fraud, counterfeiting and piracy, corruption, money laundering and organised crime.

1.Fight against fraud

All European policies, irrespective of the area of action, are financed from the Community budget, which in its turn is made up of custom duties, value added taxes (VAT) and a quota of the National Domestic Product of the Member States. It is estimated that around 1% of the EU budget, which means more than 1 billion EUR, is being misappropriated every year. The legal basis for fighting this phenomenon is set out in the Article 280 of the Treaty establishing the European Communities. The actions taken in order to fight this problem are concentrated on the protection of the financial interests of the Union and consist of fighting fraudulent practices in the use of EU funds, fighting tax or VAT related fraud, signing agreements with commercial partners and establishing European institutions responsible with fighting fraud.

1.1.Protecting the financial interests of the European Union

Protecting the financial interests of the European Union is mainly ensured by means of internal controls, enforcement of criminal Law, administrative cooperation and agreements with third countries that benefit from the financial support of the Union. **A general legal framework is provided by the following acts:**

Communication from the Commission to the Council, European Parliament and the European Court of Auditors of 17 January 2006 entitled “Commission Action Plan towards an Integrated Internal Control Framework”. It contains the guidelines to be considered in the creation of an integrated framework for internal control at European level: simplification of the legislation for the 2007 – 2013 period, integration of the common internal control principles in the proposal for the revised Financial Regulation [1], establishment and harmonisation of the presentation of control strategies and evidence providing reasonable assurance, initiation of inter-institutional dialogue on risks to be tolerated in transactions, promotion of the operational level management declarations and synthesis reports at national level, examination of the utility of management declarations outside shared and indirect centralised management mode, promotion of best practices for increasing the cost-benefit of audits at project level, construction of effective tools for sharing audit and control results and promotion of the single audit approach, initiation of pilot projects on evaluating benefits, analyzing the controls under shared management (in particular Structural Funds) at regional level and the value of existing statements, providing greater guidance for Structural Funds on managing the risk of error [2]. For 80% of its budget the Commission shares the implementation with the Member States. This is the reason why it is of outmost importance that Member States have a legal framework suited for making controls and, more important, that this framework is properly observed. Member States need to make sure that the administration of EU funds is without fault and subsequently to reduce the risk of irregular expenditure to an acceptable risk and also to be able to demonstrate this to national and European auditors. A Report from the Commission to the Council, European Parliament and the European Court of Auditors on the implementation of the Action Plan has been published in 2007, with positive conclusions.

Council Regulation (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests [3] establishes a set of rules to be applied in all EU policies to fight fraud. The act provides for administrative measures and penalties to be implemented in order to protect the financial interests of the EU. It contains measures to harmonize controls in all Member States and administrative measures and penalties to be applied in case of irregularities related to the observance of the community acquis. The Regulation defines these irregularities (as the prejudice caused by the economic operators to the community budget), sets out a general set of rules for all community policies and defines the framework for carrying out national and European controls.

Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests [4]. According to the Convention fraud affects both expenditures and revenues of the Communities and has to be discouraged by means of efficient, proportional and dissuasive penalties. Managers of companies or any other person with decision power or a person who exercises control within a company has to be liable for criminal prosecution, in accordance with the national legislation concerning fraud affecting the financial interests of the European Communities. Member States have to cooperate effectively during the investigation, prosecution and enforcement of the penalties by means of judicial assistance, extradition and transfer of proceedings or enforcement of sentences passed in another Member State. The act defines fraud affecting expenditures and revenues. Two additional protocols to this act have been signed in 1996 and 1997.

Communication from the Commission of 28 June 2000 on an overall strategic approach to the protection of the Communities financial interests. It was adopted by the Council on 17 July 2000 and approved by the European Parliament on 13 December 2000. The purpose of this Communication is to elaborate a general antifraud strategy, based on four main challenges: development of an overall anti-fraud policy, enhancement of a culture of cooperation amongst all the competent authorities, an interinstitutional initiative to prevent and combat fraud, strengthening of the penal judicial dimension

Decision No 804/2004/EC of the European Parliament and of the Council of 21 April 2004 establishing a Community action programme to promote activities in the field of the protection of the Community's financial interests (Hercule programme)[5]. The programme has initially been created for the 2004 -2006 period and subsequently extended for the 2007 -2013 period. It promotes activities related to the protection of the financial interests of the European Union and is focused on training the personnel, organizing seminars, offering technical assistance, exchange of information and coordination of the activities related to protecting of the financial interests of the Communities. The overall budget for this programme is EUR 110.5 millions.

In this general framework a series of strategies are used in order to fight frauds related to the use of European funds:

Together with improving the legislation and the management of contracts, in order to make them less permissive to fraud, a set of **controls and inspections** on the premises of economic operators are carried out by the European Commission in close cooperation with the authorities of the Member States for the purpose of fighting economic criminality related to the Community budget. The legal framework for these measures is provided by the *Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities* [6]. Controls are carried out by Commission inspectors and focus on studying budgetary and accounting files, electronic information contained in computers and financial and technical implementation of subsidised projects. At the end of such an inspection a report is elaborated and presented to the Member State; it can then be used as proof in an eventual administrative or judicial investigation.

The fight against fraud in the financing of the Common Agricultural Policy is achieved by continuously improving the cooperation between the Member States and the Commission in order to create a set of rules for protecting the financial interests of the Communities; the application of these rules has to be ensured. The main piece of *acquis* governing this area is *Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field and repealing Regulation (EEC) No 283/72* [7]. According to this act Member States have to communicate to the Commission the national legal provisions, regulations and administrative measures taken in order to make sure that the transactions financed by the European Agricultural Guidance and Guarantee

Fund (EAGGF) are properly managed, as well as the national authorities responsible with the accurate enforcement of these measures. Member States have to report to the Commission any irregularities which have been the subject of a criminal or administrative investigation. Other measures adopted with a view to facilitating the fight against fraud in the functioning of the Common Agricultural Policy are:

- monitoring the expenditures of the European Agricultural Guarantee Fund (EAGF). In 2007 the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) was replaced by the European Agricultural Guarantee Fund (EAGF). Member States are responsible for preventing and detecting the irregularities as well as for recovery of the funds lost due to such irregularities and negligence in transactions financed by the Fund. *Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC* and the amending acts *Commission Regulation (EC) No 4/2004 of 23 December 2003 laying down detailed rules for the application of Council Regulation (EEC) No 4045/89 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund* and *Commission Regulation (EC) No 2311/2000 of 18 October 2000 establishing the list of measures to which Council Regulation (EEC) No 4045/89 does not apply and repealing Decision 96/284/EC* are designed to help Member States prevent and fight irregularities by checking the documents concerning payments to or from European Agricultural Guarantee Fund. These legislative acts form the legal framework for the checks carried out with the purpose of ruling whether the transactions related to EAGF financing are or are not carried out according to provisions of the Law. The Commission can coordinate joint actions involving mutual assistance between two or more Member States;
- introducing a community system which allows the national authorities to identify economic operators who have committed or are suspected for having committed irregularities that brought prejudice to the community funds. This system is governed by the *Council Regulation (EC) No 1469/95 of 22 June 1995 on measures to be taken with regard to certain beneficiaries of operations financed by the Guarantee Section of the EAGGF* [8]. According to this act, Member States can take the following measures against an economic operator: reinforced checking of all operations performed, suspension, until the administrative determination of the existence of an irregularity, of payment of amounts relating to current operations and their exclusion for a period of time from operations;
- introducing the Single Farm Payment System, considered to be a reform of the Common Agricultural Policy. The act making possible this reform is the *Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001*. The two main improvements it brought are the decoupling of direct aid to producers by means of cutting the link between support and production and the introduction of the single payment scheme. The result of the decoupling of the aid to producers is that the aid does not depend on the type of production. Farmers can receive direct payments if they maintain a good health of the land and if they meet the public health standards for plants and animals and the environmental and animal protection norms mentioned in the Regulation. The amount of payments is decreasing on a yearly basis and the money saved is assigned to rural development measures. According to the single payment scheme farmers are granted aids irrespective of the nature of their production in order to ensure them a stable income [9].

Another area of great importance for the protection of the financial interests of the Union is based on the measures taken in order to protect the resources of the Community budget; the most important ones are the **measures taken in order to fight tax related frauds**. Because of the increasing number and seriousness of tax related frauds Member States need to cooperate in order to improve European legislation on taxation and in order to increase the number and the efficiency of the actions taken against taxation frauds. The European Commission supports this strategy in its *Communication, dated 31 May 2006, to the Council, the European Parliament and the European Economic and Social Committee concerning the need to develop a coordinated strategy to improve the fight against fiscal fraud*. In order to ensure the proper application of the Value Added Tax (VAT) and fight against fraud, the European Union introduced a system for mutual administrative cooperation and information exchange between the Member States. *Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92* provides for the conditions and terms of cooperation between national authorities responsible with the **enforcement of the legislation on VAT** on goods and services, intracommunity acquisition of goods and import of goods. The Regulation provides for the framework for cooperation between Member States and the Commission, for the rules and procedures which support national authorities to cooperate with each other and exchange information in order to accurately evaluate the VAT [10].

The deficiencies of the legislation related to customs activities and operations that breach customs legislation, including infringement of the intellectual property rights, bring prejudices to the economic, fiscal, social, cultural and commercial interests of the Member States and the Community. For this reason European Union has signed a series of **agreements with commercial partners all over the world** in order to fight fraud and other criminal activities affecting its financial interests.

1.2 Institutional development

For the best results in fighting fraud, together with setting up a legal framework, several **institutions** have been created at European level.

In order to improve the means for preventing and fighting fraud, the European Commission has set up the **European Anti-Fraud Office (OLAF)**. The official act establishing the Office is *Commission Decision of 28 April 1999 establishing the European Anti-Fraud Office (OLAF)*. The office has responsibilities in carrying out administrative investigations and has been granted a special status. It began its activity on June 1st, 1999. OLAF enjoys all investigative powers granted to the Commission by the Community acquis and by the agreements with third countries for fighting fraud, corruption and other illegal activities affecting the financial interests of the European Community. The Office has over 400 employees. Together with protecting Community's financial interests, the responsibility of the Office concerns all the activities connected to safeguarding Community interests against irregular behaviour likely to lead to administrative or penal proceedings. In order to coordinate the actions of the Member States in their fight against fraud detrimental to the interests of the Community, OLAF provides them with the support of the Commission, aimed at organising close and regular cooperation between the competent national authorities. Additionally, the Office, as a Commission service, contributes to the planning and the development of prevention and anti-fraud methods. [11]

The Advisory Committee for the Coordination of Fraud Prevention (COCOLAF). This Committee coordinates the actions of the Member States and the Commission in the fight against fraud affecting the financial interests of the Community. The legal basis for its functioning is the *Commission Decision 94/140/EC of 23 February 1994 setting up an advisory committee for the coordination of fraud prevention*. The Committee may be consulted by the Commission on any matter related to the protection of the financial interests of the Community and the protection of Euro notes and coins against counterfeiting.

The European Court of Auditors. It was established in 1975, with the headquarters in Luxembourg. The Court sees that the Community budget is properly implemented, which means that the funds are properly collected from the taxpayers and that they are legally economically spent. It is made up of 27 members, one for every Member State, and supported by 800 auditors. It sets its own Rules of Procedure, which are approved by the European Council. The Court can not impose sanctions, it does not have judicial powers; instead it drafts annual reports which are then published in the Official Journal. The audit carried out is meant to improve the financial management of the European institutions and to show European citizens the way their money is spent. The irregularities observed are then transmitted to the competent authorities, including OLAF.

2.Fight against counterfeiting and piracy

Counterfeiting and piracy is seriously affecting the functioning of the common European market and has a negative impact over the public safety and security. Both economic and social life is affected as commerce is hampered and the free competition is inhibited, leading to the loss of confidence in the economy by the economic operators and to the reduction of investments.

It is estimated that these activities represent between 5% and 7% of the international trade and are responsible for the loss of over 200,000 jobs. Moreover, European companies with activities outside community area are losing between 400 and 800 million US Dollars on the European market and around 2000 million US Dollars on the global market every year. The software market is mainly affected by this distress. One of the worst aspects of this phenomenon is the high risk for European consumers presented by the dangerous counterfeited goods such as medicines, auto parts and food.

Due to the important role it gained on the international economic arena the Euro has become a preferred target for the international counterfeiting organisations, both in European Union and in third countries. In order to **protect the Euro against counterfeiting** European institutions have adopted legislative, technical and institutional measures. A series of legislative acts have been adopted for this reason out of which we mention the following: *Council Decision 2001/887/JHA of 6 December 2001 on the protection of the Euro against counterfeiting* provides a general, cohesive and efficient system to protect the Euro against counterfeiting. In order to ensure that the Euro is appropriately protected against counterfeiting by the criminal laws of all Member States, the *Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the Euro* has been adopted.

Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the Euro against counterfeiting sets up the legal framework for the cooperation between Member States, the Commission, the European Central Bank and Europol. The cooperation implies exchange of information and mutual assistance in preventing and fighting counterfeiting of Euro notes and coins [12]. The **European Technical and Scientific Centre (ETSC)** has been created, with the role of analysing counterfeit Euro coins and assists the national authorities in their efforts. The Centre functions within the European Commission in Brussels and is attached to the European Anti-Fraud Office. The legal basis for its functioning is the *Commission Decision 2005/37/EC of 29 October 2004 establishing the European Technical and Scientific Centre (ETSC) and providing for coordination of technical actions to protect Euro coins against counterfeiting* [13]. In the *Council Decision 2005/511/JHA of 12 July 2005 on protecting the Euro against counterfeiting, by designating Europol as the Central Office for combating Euro counterfeiting*, the Council designated **Europol** as the central European office for combating Euro counterfeiting and for stepping up cooperation among Member States, Europol and third countries. The main role of Europol in this field of activity is to centralise and

processes all information of a nature to facilitate the investigation, prevention and combating of Euro counterfeiting and to forward it to the national central offices of the Member States.

Together with fighting counterfeiting of notes and coins, **counterfeiting of non cash means of payment** is dealt with at European level. According to the *Council framework Decision of 28 May 2001 on combating fraud and counterfeiting of non-cash means of payment* [14] fraud involving any form of non-cash means of payment is recognised as a criminal offence that is punishable by effective, proportionate and dissuasive penalties in all EU Member States. It defines criminal behaviour concerning offences related to payment instruments, such as cards or cheques, offences related to computers and offences related to specifically adapted devices. According to this act each Member State has to take the necessary measures to ensure that legal persons can be held liable for criminal conduct committed for their benefit by any person, acting either individually or as part of an organ of the legal person.

Together with legislative and institutional measures, technical measures have also been taken. The **Pericles programme** promotes cooperation between the national, European and international authorities responsible for combating counterfeiting of the Euro. The measures envisaged include exchanges of best practices in seminars, workshops, meetings and conferences, training, exchanges of staff and technical, scientific and operational assistance. The act setting up this programme is *Council Decision 2001/923/EC of 17 December 2001 establishing an exchange, assistance and training programme for the protection of the Euro against counterfeiting (Pericles programme)*. The aim of the Pericles programme is to raise awareness of the Community dimension of the Euro among all those concerned, to encourage a climate of mutual trust by way of practical measures such as training, specialist workshops and staff exchanges or to make known the results attained as part of the exchange of information, experience and best practices [15].

In order to ensure an equivalent level of **protection for intellectual property** in the Member States the *Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights* has been adopted. The main objectives of this Directive are to promote innovation and business competitiveness, to safeguard employment in Europe, to prevent tax losses and destabilisation of the markets, to ensure consumer protection and to maintain the public order [16].

Customs controls have been tightened in order to help combat counterfeiting and piracy in the Community. *Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights* clarifies the means and conditions for customs action against goods suspected of infringing intellectual property rights [17].

3.Fight against corruption

The European Commission considers that it is vitally important to address corruption wherever it occurs, be it in the public or in the private sector. In the public sector, corruption means prejudices to the local, national or European budgets as well as to economic environment, by offering unfair advantages to few while being detrimental to society at large. Corruption in the private sector has a direct impact on competitiveness and economic development. By tackling private sector corruption, Member States are reinforcing the internal market and strengthening their economies. Furthermore, these measures have a positive impact on relations with the European Community's external trade partners.

On the basis of the Council Act of 26 May 1997 drawing up the Convention made on the basis of Article K.3 (2) (c) of the Treaty on European Union, on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union Member States must take the necessary measures to ensure that conduct constituting an act of passive corruption or active corruption by officials is a punishable criminal offence.

Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector requires Member States to penalise acts intentionally carried out as part of business activities and corrupting a person or demanding an undue advantage. The aim of this Framework Decision is to involve the liability not only of natural persons in the capacity of employees but also of legal persons such as firms [18].

On 15 September 2005 the European Commission and the Council Presidency **signed the United Nations Convention against Corruption** on behalf of the European Community. The purpose of the Convention is to promote and strengthen measures to prevent and combat corruption more efficiently and effectively, to promote, facilitate and support international cooperation and technical assistance and to promote integrity, accountability and proper management of public affairs and public property. The Convention lays down the preventive anti-corruption measure to be taken by the signing states in both public and private sector, measures for criminalisation and Law enforcement, international cooperation, asset recovery, technical assistance and exchange of information and the mechanisms for its implementation. The Convention recommends the States Parties to adopt legislative and other measures as may be necessary to establish a whole series of criminal offences, such as: corruption of national or foreign public officials and officials of public international organisations, embezzlement, misappropriation or other diversion by a public official of any public or private property, trading in influence, abuse of functions and illicit enrichment.

4.Fight against money laundering

Because of the need to protect the financial system from abuse and in order to support the efforts to fight organized criminality in the financial system, the fight against money laundering became a top priority for the European Union. In the conclusions of the Tampere Summit the European Council stated that money laundering is at the very heart of organised crime and that it should be rooted out wherever it occurs and concrete steps must be taken to trace, seize, freeze and confiscate the proceeds of crime. This means employing several strategies such as preventing the use of financial system for money laundering or terrorism financing and preventing money laundering through customs cooperation by making everyone who enters or leaves EU to declare any amount of money greater than 10,000 EUR.

In order to **prevent the financial system from being used for money laundering and terrorist financing**, the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing has been adopted; subsequently amended in 2007, 2008. The Directive applies to credit and financial institutions and to natural or legal persons working as auditors, external accountants and tax advisers, notaries and other legal professions, real estate agents. It describes money laundering as the conversion or transfer of property derived from criminal activity or from an act of participation in such an activity, for the purpose of concealing or disguising the illicit origin of the property, assisting any person who is involved in the commission of such activity to evade the legal consequences of his action, the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property or the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity. Credit and other financial institutions are forbidden to keep anonymous accounts or anonymous passbooks. Each Member State is required to set up a **Financial Intelligence Unit (FIU)** which has to be responsible for receiving, requesting, analysing and disseminating to the competent authorities disclosures of information which concern potential money laundering or potential terrorist financing. The institutions and persons covered by the Directive are required to inform the FIU as quickly as possible when they know, suspect or have reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted. At the FIU's request, they

must furnish all necessary information in accordance with legislation. Where money laundering or terrorist financing is suspected, the institutions and persons covered by the Directive are required to refrain from carrying out transactions until they have informed the FIU of them. [19] In addition to the above mentioned Directive, in order to introduce preventive action to **combat money laundering and terrorist financing through more effective customs cooperation**, the European Parliament and the Council adopted the *Regulation (EC) No 1889/2005 of 26 October 2005 on controls of cash entering or leaving the Community*. The Regulation places an obligation on any natural person entering or leaving the Community and carrying cash of a value of EUR 10,000 or more to declare that sum to the competent authorities. The authorities may check the compliance with the obligation to declare the money by carrying out controls on natural persons [20].

5.Fight against organised crime

Organised financial crime undermines legitimate economic actors and strengthens the shadow economy, thus inhibiting economic growth and reducing public resources. Reducing the organised financial crime has a broader impact on the fight against organised crime in general as money is the lifeblood of organised crime. Removing access by organised crime groups to money is bound to erode their power base. Fighting organised crime includes prevention and fight against organised crime in the financial sector. It covers a range of illegal activities, including money laundering, financial fraud and counterfeiting of the Euro when they are committed by criminal organisations. Another line of action is fighting corporate and financial malpractice, which can be achieved by four means: internal control in a company and corporate governance, help from independent third parties, supervision by specialised institutions and Law enforcement. Identification and confiscation of the proceeds of organized economic crime is also used in order to discourage criminal organisations. A European framework for mutual recognition and cooperation between Asset Recovery Offices in the Member States has been created to help.

In its Communication to the Council and the European Parliament of 27 September 2004 on preventing and combating corporate and financial malpractice the Commission identifies four lines of "defence" against **corporate malpractice** that focus on a series of measures divided into four lines of defence: the internal control in companies and corporate governance, the use of independent third parties, such are auditors, accounting firms, banks, lawyers, rating agencies and financial analysts, the supervision, conducted by specialised institutions of the Member States and by European supervisory authorities, such are the Committee of European Securities Regulators, the European Banking Committee, the European Insurance and Pension Committee, the Committee of Insurance and Occupational Pension Supervisors and the Committee of Banking Supervisors. The fourth line of defence is enforcement of the Law and is provided by police and judicial authorities responsible with investigations and prosecutions that may have both a preventive and a repressive effect [21]. According to the Commission, several improvements have to be made in order to prevent and fight corporate and financial malpractice: exchange of information between national authorities and European institution such are Europol and Eurojust has to be improved, cooperation between financial and other business sectors and law-enforcement authorities has to be increased and traceability of financial flows for the recording of electronic payments has to be introduced. This communication is part of the EU framework for dealing with financial issues, made up of the Financial Services Action Plan, implementing the framework for financial markets and the Action Plan on Modernising Company Law and Enhancing Corporate Governance in the European Union.

According to the Joint Action 98/699/JHA of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime [22] each Member State must ensure that its legislation and procedures enable it to permit the

identification and tracing of suspected proceeds from crime at the request of another Member State where there are reasonable grounds to suspect that a criminal offence has been committed. Such legislation and procedures enable assistance to be given at the earliest possible stages in an investigation. Member States must encourage direct contact between investigators, investigating magistrates and prosecutors of Member States to ensure that requests for assistance through formal channels are not made unnecessarily. Member States must take all necessary steps to ensure that assets which are the subject of a request from another Member State can be frozen or seized expeditiously, so that a later confiscation request is not frustrated. Member States must harmonise their activities with the best practices in international cooperation in the **identification, tracing, freezing or seizing and confiscation of instrumentalities and the proceeds from crime** and must provide appropriate training to all officials concerned with international cooperation in this area. Several acts have taken this action further: Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime [23], Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence [24], Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation order [25] and Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to crime [26].

Fighting criminality by means of confiscating and recovery of the assets resulted from crime requires the establishment of national structures that can facilitate the tracing of criminal assets, participate in confiscation procedures, ensure the proper management of the seized assets and act as central contact points for confiscation activities at national level. In order to meet these needs **Asset Recovery Offices** have been set up in the Member States, but fully operational structures can only be found in several Member States (Austria, Belgium, Estonia, France, Germany, Ireland, The Netherlands and the United Kingdom) and even these present large differences in structure, powers and practices one from another. From the experience gathered by the functioning Asset Recovery Office several **best practices and recommendations** are to be followed when setting up a national structure: it should have a multidisciplinary structure comprising expertise from law enforcement, judicial authorities, tax authorities, social welfare, customs and other relevant services. The representatives of these authorities should be able to exercise their usual powers and to disclose information within the Asset Recovery Offices without being bound by professional secrecy. Asset Recovery Offices should be adequately resourced and provide a central point for all incoming requests of assistance from other countries. They should collect all relevant statistics on asset freezing and confiscation. Where Asset Recovery Offices do not directly manage seized assets, they should at least collect information on seized assets from the authorities managing them. They should exchange information rapidly, possibly within the time limits foreseen by the Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. The legal possibilities for each Asset Recovery Office to spontaneously exchange information should be further analysed. The information that can be obtained from each Asset Recovery Office without resorting to mutual legal assistance procedures should be clarified. The certificates to request the execution of freezing orders and confiscation orders in another Member State, as well as the mutual legal assistance forms, should be revised in order to make them easier to use. Detailed guidance should be provided on how to complete them. A standardised secure channel of communication between Asset Recovery Offices should be established. Asset Recovery Offices should have access to all relevant databases (both open and closed databases, such as Land Registry, Company Records, Vehicle Registration, Convictions and databases from the financial institutions, the police, tax

authorities, social welfare agencies, etc.) to identify and trace assets, including financial information (ideally to a central bank account registry at national level) and should have coercive powers to obtain such information. They should have the powers to provisionally freeze assets in order to prevent dissipation of the proceeds of crime between the moment when assets are identified and the execution of a freezing or confiscation court order. They should also be able to conduct joint investigations with other authorities

Conclusions

The efforts of the European Union in fighting economic criminality have been directed to five areas, corresponding to those crimes severely impacting on the European economic and social environment. The fight against fraud affecting the financial interests of the European Communities is mainly carried out by combating fraudulent use of European funds and by combating tax fraud. It is in this area that the European authorities are most present and visible, having control powers over national and European institutions. Fighting counterfeiting and piracy, as well as corruption, is financially supported by the Commission, while fighting money laundering implies setting up national structures responsible with the exchange of information and best practices between Law enforcement agencies. As far as fighting organised crime is concerned, the accent is on the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime and on the cooperation between national authorities.

As far as fighting economic criminality is concerned, the Law enforcement authorities in the Member States are supported by the European institutions. Moreover, due to the negative effects it has on the economic and social environment, the fight against this phenomenon has become a priority for the European Union. Together with establishing a legal framework for fighting criminality, a series of technical and administrative measures have been taken at European level. One of these measures is setting up specialised structures acting at European level, which, even though without judicial powers, have a very important role in coordinating the efforts of the national authorities and in facilitating the exchange of information and best practices between them.

Nevertheless, although an impressive number of European legislative acts have been adopted, largely elaborated on by the national representatives within Council's working parties, their effect is not the expected one, mainly given the different levels attained in the implementation of their provisions into the Member States national legislation. This, together with the disparities still present in what concerns national legislations and practices, makes it difficult for the Law enforcement authorities to fight economic criminality in the European Union.

References

- [1] *Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities*, Official Journal L 248 of 16.09.2002, p.1. Available from < <http://eur-lex.europa.eu> >.
- [2] *Communication from the Commission to the Council, European Parliament and the European Court of Auditors of 17 January 2006 named "Commission Action Plan towards an Integrated Internal Control Framework {SEC(2005) 49}, COM/2006/0009 final*, Brussels: 17.01.2006. p. 15. Available from <<http://eur-lex.europa.eu>>.
- [3] *Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests*, OJ L 312, 23.12.1995, p. 1–4. Available from < <http://eur-lex.europa.eu> >.
- [4] *Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests*, Official Journal C 316, 27.11.1995, p. 48-48. Available from < <http://eur-lex.europa.eu> >.
- [5] *Decision No 804/2004/EC of the European Parliament and of the Council of 21 April 2004 establishing a Community action programme to promote activities in the field of the protection of*

the Community's financial interests (Hercule programme), OJ L 143, 30.4.2004, p. 9–14. Available from < <http://eur-lex.europa.eu>>.

[6] *Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities*, OJ L 292, 15.11.1996, p. 2–5. Available from < <http://eur-lex.europa.eu>>.

[7] *Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field and repealing Regulation (EEC) No 283/72 (OJ No L 67 of 14.3.1991)*, OJ L 92, 13.4.1991, p. 43–43 Available from < <http://eur-lex.europa.eu>>.

[8] *Council Regulation (EC) No 1469/95 of 22 June 1995 on measures to be taken with regard to certain beneficiaries of operations financed by the Guarantee Section of the EAGGF*, OJ L 145, 29.6.1995, p. 1–3. Available from < <http://eur-lex.europa.eu>>.

[9] *Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001*, OJ L 270, 21.10.2003, p. 1–69. Available from < <http://eur-lex.europa.eu>>.

[10] *Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92*. OJ L 264, 15.10.2003, p. 1–11. Available from < <http://eur-lex.europa.eu>>.

[11] *Commission Decision 94/140/EC of 23 February 1994 setting up an advisory committee for the coordination of fraud prevention*, OJ L 61, 4.3.1994, p. 27–28. Available from < <http://eur-lex.europa.eu>>.

[12] *Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the Euro against counterfeiting*, OJ L 181, 4.7.2001, p. 6–10. Available from < <http://eur-lex.europa.eu>>.

[13] *Commission Decision 2005/37/EC of 29 October 2004 establishing the European Technical and Scientific Centre (ETSC) and providing for coordination of technical actions to protect Euro coins against counterfeiting*, OJ L 19, 21.1.2005, p. 73–74. Available from < <http://eur-lex.europa.eu>>.

[14] *Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (2001/413/JHA)*, Official Journal of the European Communities L 149/1. Available from < <http://eur-lex.europa.eu>>.

[15] *Council Decision 2001/923/EC of 17 December 2001 establishing an exchange, assistance and training programme for the protection of the Euro against counterfeiting (the "Pericles" programme)*, OJ L 339, 21.12.2001, p. 50–54. Available from < <http://eur-lex.europa.eu>>.

[16] *Directive 2004/48/EC of the European Parliament and of the Council Of 29 April 2004 on the Enforcement of Intellectual Property Rights*, OJ L 157, 30.4.2004, p. 45–86. Available from < <http://eur-lex.europa.eu>>.

[17] *Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights*, OJ L 196, 2.8.2003, p. 7–14. Available from < <http://eur-lex.europa.eu>>.

[18] *Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector*, OJ L 192, 31.7.2003, p. 54–56. Available from < <http://eur-lex.europa.eu>>.

- [19] *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing*, OJ L 309, 25.11.2005, p. 15–36. Available from < <http://eur-lex.europa.eu>>.
- [20] *Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community*, Official Journal L 309 , 25/11/2005 P. 0009 – 0012. Available from < <http://eur-lex.europa.eu> >.
- [21] *Communication from the Commission to the Council and the European Parliament on Preventing and Combating Corporate and Financial Malpractice*, COM/2004/0611 final. Available from < <http://eur-lex.europa.eu>>.
- [23] *Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime*, OJ L 182 of 5.7.2001, p. 1. Available from < <http://eur-lex.europa.eu/JOIndex.do>>.
- [22] *Joint Action 98/699/JHA of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime*, Official Journal L 333 , 09/12/1998 P. 0001 – 0003. Available from < <http://eur-lex.europa.eu> >.
- [24] *Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence*, OJ L 196 of 2.8.2003, p. 45. Available from < <http://eur-lex.europa.eu/JOIndex.do>>.
- [25] *Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders*, OJ L 328 of 24.11.2006, p. 59. Available from < <http://eur-lex.europa.eu/JOIndex.do>>.
- [26] *Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to crime*, OJ L 332 of 18.12.2007, p. 103. Available from < <http://eur-lex.europa.eu/JOIndex.do>>.

Bibliography

Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (notified under document number SEC (1999) 802), OJ L 136, 31.5.1999, p. 20–22 . Available from< <http://eur-lex.europa.eu>>.

Commission of the European Communities, *Communication from the Commission to the Council, the European Parliament and the European Court of Auditors: Commission Action Plan towards an Integrated Internal Control Framework*, COM(2006) 9 final, Brussels, 17.1.2006. Available from < <http://eur-lex.europa.eu> >.

Commission of the European Communities, *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on a Customs response to latest trends in Counterfeiting and piracy*, Com (2005) 479 final, Brussels, 11.10.2005. Available from < <http://eur-lex.europa.eu>>.

Commission of the European Communities, *Report from the Commission to the Council, the European Parliament and the European Court of Auditors on the progress of the Commission Action Plan towards an Integrated Internal Control Framework*, COM(2007) 86 final, Brussels, 7.3.2007. Available from <<http://eur-lex.europa.eu>>.

Communication from the Commission Protection of the Communities' financial interests, The fight against fraud for an overall strategic approach, COM/2000/0358 final. Available from < <http://eur-lex.europa.eu>>.

Communication from the Commission to the Council and the European Parliament, *The Hague Programme: Ten priorities for the next five years The Partnership for European renewal in the field of Freedom, Security and Justice*, COM(2005) 184 final, Brussels, 10.5.2005. Available from <<http://eurlex.europa.eu>>.

Communication from the Commission to the Council and the European Parliament on Preventing and Combating Corporate and Financial Malpractice, COM/2004/0611 final. Available from < <http://eur-lex.europa.eu>>.

Communication from the Commission to the Council and the European Parliament on the prevention of and fight against organised crime in the financial sector, COM/2004/0262. Available from < <http://eur-lex.europa.eu>>.

Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee - Follow-up to the Green Paper on combating counterfeiting and piracy in the single market, COM/2000/0789 final. Available from < <http://eur-lex.europa.eu>>.

Communication from the Commission to the European Parliament and the Council: Proceeds of organised crime. Ensuring that "crime does not pay", COM(2008) 766 final, Brussels, 20.11.2008. Available from < <http://ec.europa.eu/prelex>>.

Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, OJ C 195, 25.6.1997, p. 2–11. Available from < <http://eur-lex.europa.eu> >.

Convention drawn up on the basis of Article K.3 of the treaty on European Union, on the protection of the European Communities' financial interests, OJ C 316 of 27.11.1995, p.49. Available from < <http://eur-lex.europa.eu>>.

Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 326 of 21.11.2001. Available from < <http://eur-lex.europa.eu/JOIndex.do>>.

Council Act of 26 July 1995 drawing up the Convention on the protection of the financial interests of the European Communities, OJ C 316, 27.11.1995, p. 48–48. Available from < <http://eur-lex.europa.eu/LexUriServ> >.

Council Decision 2001/887/JHA of 6 December 2001 on the protection of the Euro against counterfeiting, OJ L 329, 14.12.2001, p. 1–2. Available from < <http://eur-lex.europa.eu> >.

Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-related Proceeds, Instrumentalities and Property, OJ L 68 of 15.3.2005, p. 49. Available from < <http://eur-lex.europa.eu/JOIndex.do>>.

Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386 of 18.12.2006, p. 89. Available from < <http://eur-lex.europa.eu/JOIndex.do>>.

Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters, OJ L 350, 30.12.2008, p. 72–92. Available from < <http://eur-lex.europa.eu/JOIndex.do>>.

Council framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the Euro, OJ L 140, 14.6.2000, p. 1–3. Available from < <http://eur-lex.europa.eu>>.

Council of the European Union, doc 10540/08 CRIMORG 89, Brussels, 10 June 2008. Available from < <http://www.eurowarrant.net/documents>>.

Council of the European Union, doc 16054/04 JAI 559, Brussels, 13 December 2004. Available from <http://ec.europa.eu/justice_home/doc_centre/doc/hague_programme_en.pdf>.

Council of the European Union, doc 16710/08 CRIMORG 210, Brussels, 4 December 2008. Available from < <http://www.eurowarrant.net/documents>>.

Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC, OJ L 388, 30.12.1989, p. 18–23. Available from < <http://eur-lex.europa.eu> >.

Report from the Commission pursuant to Article 6 of the Council Framework Decision of 24 February 2005 on Confiscation of Crime-related Proceeds, Instrumentalities and Property (2005/212/JHA), COM (2007) 805. Available from <http://ec.europa.eu/justice_home/doc_centre/crime/doc/com_2007_805_en.pdf>.

Report from the Commission to the Council based on Article 9 of the Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, SEC(2007) 808, COM/2007/0328 final. Available from < <http://eur-lex.europa.eu> >.

Second Protocol, drawn up on the basis of Article K.3 of the treaty on European Union, to the Convention on the protection of the European Communities' financial interests, OJ C 221 of 19.7.1997, p.12. Available from < <http://eur-lex.europa.eu/JOIndex.do> >.

United Nations, *United Nations Convention against Corruption*, New York, 2004. Available from < <http://www.unodc.org/documents/treaties/UNCAC> >.

United Nations, *United Nations Convention against Corruption*, New York, 2004. Available from <<http://www.unodc.org/documents/treaties/UNCAC> >.

Internet sites

<http://ec.europa.eu/dgs/olaf>.

<http://www.assetrecovery.org>.

<http://www.euractiv.com>.

<http://www.eur-lex.europa.eu>.

<http://www.europa.eu/scadplus/leg>.

<http://www.europol.europa.eu>.

<http://www.unodc.org>.

http://ec.europa.eu/dgs/olaf/mission/mission/index_en.html